



THE SECRETARY OF THE NAVY
WASHINGTON DC 20350-1000

February 28, 2014

The Honorable Robert "Beto" O'Rourke
House of Representatives
Washington, DC 20515-4316

Dear Representative O'Rourke:

Thank you for your letter of November 21, 2013, concerning the eligibility of U.S. citizens with foreign alien dependents to serve in the military. I provided an interim response on December 19, 2013, and wanted to provide additional information on the matter. Your letter accurately captures the pertinent excerpts from both the Navy Recruiting Command and Marine Corps Recruiting Command Manuals and reflects the current Department of the Navy policy. We prefer to allow the Army and Air Force to specify the policies and regulations they follow.

Marine Corps Recruiting Command (MCRC) and Navy Recruiting Command (NRC) began enforcement of these policy regulations in 2008 and 2009, respectively. Recruiters are trained to assess basic enlistment eligibility requirements as required for processing and enlistment. All applicants are required to fill out enlistment documentation to determine basic eligibility and entry requirements. If an applicant claims dependents, and the dependents are permanent residents of the United States, the applicant is required to produce documentation of the dependents' proof of citizenship or legal alien status (e.g., green card). If an applicant with dependents is unable to produce required dependent documents, enlistment processing is ceased until proper documentation can be provided, which is in keeping with the current Navy and Marine Corps Recruiting regulations. NRC and MCRC do not track the number of potential applicants or prospects they are unable to process due to an inability to produce required dependent documentation.

The policy changes were driven primarily by administrative processing requirements resulting from the promulgation of Homeland Security Presidential Directive 12 (HSPD-12): "Policy for a Common Identification Standard for Federal Employees and Contractors" on August 27, 2004; the subsequent implementing policy per DoD Directive-Type-Memorandum (DTM) 08-006 – "DoD Implementation of Homeland Security Presidential Directive – 12 (HSPD-12)" on November 26, 2008; personnel security investigation requirements; and compliance with Title 8 of United States Code (U.S.C.), "Aliens and Nationality."

DTM-08-006 requires that uniformed service members (and other federal employees) initiate National Agency Check with Inquiries (NACI); National Agency Check, Law Checks, and Credit, or an initiated national security investigation; and a favorable completion of a Federal Bureau of Investigation fingerprint check for credential (ID card) issuance. The National Agency Check with Law and Credit (NACLC) personnel security investigation requires the completion and submission of the Office of Personnel Management (OPM) SF-86 (Questionnaire for National Security Positions), which requires SSN or other approved document number for spouses. Such information is also required to issue dependent ID cards per BUPERSINST 1750.10C and MCO 5512.11D, "Identification Cards for Members of the Uniformed Services, Their Eligible Family Members, and Other Eligible Personnel." In addition, specific documents such as marriage license, birth certificate, social security card and photo ID are required to enroll spouses into the Defense Enrollment Eligibility Reporting System (DEERS). At the time the policy was changed, the Navy Accession Security Information System (NASIS) did not allow a personnel security investigation application to move forward without proper identification (SSN, Individual Taxpayer Identification Number, alien registration number, etc.) for each person listed in the questionnaire. The SF-86 also requires citizenship and additional information for immediate family. If the listed family members are foreign aliens, there exists the potential for an unfavorable determination of the personnel security investigation due to foreign influence. Specifically, the Code of Federal Regulations (32 C.F.R. §147.4(a)) provides that a security risk may exist when a member of an individual's immediate family, including his/her spouse, is not a citizen of the United States, as this could "create the potential for foreign influence that could result in the compromise of classified information."

If the family members are undocumented foreign aliens, there exists the potential for questions regarding compliance with certain provisions of Title 8 U.S.C. §1324 and §1611. Title 8 U.S.C. §1324 describes criminal penalties for "bringing in and harboring certain aliens"; provides that a United States resident may not knowingly conceal, harbor, or shield from detection an illegal alien; and provides civil and criminal penalties for the violation of established immigration procedures. Navy and Marine Recruiters are not in a position to determine whether a prospective applicant is harboring, or unlawfully facilitated the entrance of, an illegal alien into the United States contrary to Federal law. The proper Agency to make that determination is U.S. Citizenship and Immigration Services (USCIS). Title 8 U.S.C. §1611 provides that "an alien who is not a qualified alien is not eligible for any Federal public benefit." The accession of applicants with undocumented dependents into the Navy or the Marine Corps will result in the provision of a number of direct and indirect benefits to these dependents, including medical and dental care, commissary and exchange privileges, and a higher Basic Allowance for Housing (BAH) for the service member. Therefore, the provision of military benefits to support non-qualified dependents is potentially a violation of fiscal law.

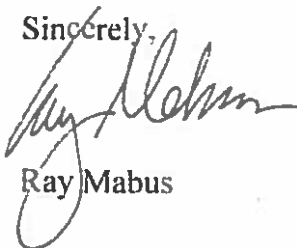
In addition to the above concerns, there are additional unresolved questions regarding duty location assignments, military occupational specialty assignments and eligibility, foreign area clearance, and other matters that could be triggered by a change in Navy and Marine Corps accession policies regarding prospective applicants with illegal alien dependents. To reduce the administrative complications and address the concerns of noncompliance with the law posed by these applicants, both the Navy and Marine Corps require the dependents' legal status be resolved prior to enlistment. Given the concerns discussed above, the current policies are necessary.

The Department of the Navy is a key stakeholder in the Department of Defense led working group tasked to review all service policies with respect to this matter. This effort will examine the existing restrictions of national security policy and military personnel policy, to include the implications of the Department of Homeland Security's November 15, 2013, Policy Memorandum regarding parole of spouses, children and parents of service members. We look forward to participating in the review and possibly modifying our procedures.

COMNAVCRUITCOMINST 1130.8J, Enlisted Recruiting Manual, and MCRCO 1100.1, Enlistment Processing Manual, are the references used by Department of the Navy recruiting personnel to determine basic eligibility and processing requirements. These instructions are available on-line at:
<http://www.cnrc.navy.mil/publications/1130.8J.htm> and
<http://www.hqmc.marines.mil/Portals/61/Docs/FOIA/MCRCO1100.1EPM.pdf>

I trust this answers your questions. As always, thank you for bringing your concerns to our attention and for your continued support of our military. A similar response has been sent to each of your colleagues who also expressed an interest in this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Ray Mabus", written over the word "Sincerely,".

Ray Mabus